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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

DEAN CYCON d/b/a DEAN'S BEANS
50 R.W. Moore Avenue
Orange, MA 01364

Opposer

v.

HERBAL TECHNOLOGIES, INC.
4051 Glencoe Avenue, No.8
Marina Del Rey
California 90292

Applicant.

In the Matter of Trademark
Application Ser. No. 76/620,265

For the mark: DEAN'S BEANS

Published in the Official Gazette
on November 15, 2005

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

12/22/2005 K6IBBONS 00000030 76620265

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NOTICE OF OPPOSITION

Mr. Dean Cycon, d/b/a Dean's Beans, of 50 R.W. Moore Avenue, Orange, MA 01364 ("Opposer") believes he and his business will be damaged by the registration of the following mark:



12-15-2005

Application Serial No. 76/620,265 filed on November 12, 2004, and published in the Official Gazette on November 15, 2005, seeking registration of the mark DEAN'S BEANS in non-stylized form for goods listed as nutritional supplements for humans, namely, dietary food supplements, herbal supplements, nutritional supplements, vitamin and mineral supplements, natural food supplements in International Class 5.

filed by Herbal Technologies, Inc. of 4052 Glencoe Avenue, No. 8, Marina Del Rey, California 90292 ("Applicant"), and Opposer hereby opposes said application for registration.

The grounds for opposition include:

1. Opposer has for over twelve years been continuously using the mark DEAN'S BEANS on coffee and cocoa beans, and tea bags, and has never abandoned its use of the mark DEAN'S BEANS with such goods.

2. Opposer has for over nine years been continuously using the mark DEAN'S BEANS on natural food and herbal food products such as chai, and has never abandoned its use of the mark DEAN'S BEANS with such goods.

3. Opposer is the owner of the valid and subsisting trademark registration issued by the U.S. Patent and Trademark Office for DEAN'S BEANS, Registration No. 2,184,098 for coffee and cocoa beans, and tea bags. A copy of Opposer's Trademark Registration No. 2,184,098 is provided herewith as Exhibit A.

4. Registration No. 2,184,098 for Opposer's mark DEAN'S BEANS, which is registered for use with coffee and cocoa beans, and tea bags, has acquired incontestable status.

5. The public has come to know and associate the goods bearing Opposer's marks with Opposer and as a result the marks are valuable assets of Opposer and represent a substantial source of income and goodwill.

6. Over the years, the promotion, marketing, and sale of Opposer's goods under its marks have established Opposer as a well-known provider of food products including coffee and cocoa beans, and tea bags and chai.

7. Active and on-going promotion and marketing by Opposer of its goods have developed a recognition in the minds of the public that Opposer is a well established provider of food products such as coffee and cocoa beans, and tea bags and chai under the mark DEAN'S BEANS.

8. Opposer's mark DEAN'S BEANS is inherently distinctive, or has acquired distinctiveness through secondary meaning developed through Opposer's use of the mark DEAN'S BEANS.

9. Opposer has continuously conducted business under the name "DEAN'S BEANS" for at least twelve years, and has never abandoned its use of the business name "DEAN'S BEANS".

10. Upon information and belief, Applicant had not used the mark DEAN'S BEANS in commerce on or in connection with the goods listed in Application Serial No. 76/620,265 prior to November 12, 2004.

11. On information and belief, Opposer used its mark DEAN'S BEANS in intrastate and interstate commerce prior to any use of the mark DEAN'S BEANS by Applicant and prior to the filing of Trademark Registration Application Serial No. 76/620,265 by Applicant on November 12, 2004.

12. Opposer's mark DEAN'S BEANS became famous before Applicant filed its intent-to-use Trademark Application Serial No. 76/620,065.

13. The mark DEAN'S BEANS which is the subject of a Trademark Application Serial No 76/620,265 filed under section 1(b) on an intent-to-use basis by the Applicant on November 12, 2004, is identical to the mark DEAN'S BEANS in the Opposer's Registration No. 2,184,098.

14. The goods stated in the above-referenced Application Serial No. 76/620,265, namely "nutritional supplements for humans, namely, dietary food supplements, herbal supplements, nutritional supplements, vitamin and mineral supplements, natural food supplements" are similar to, and likely in part the same as, the goods offered by Opposer, including those listed in the Opposer's above-referenced registration.

15. The goods recited in the Application Serial No. 76/620,265 are likely to be offered through the same channels of trade and to the same class of

customers as the goods offered by Opposer under Opposer's mark DEAN'S BEANS.

16. The mark DEAN'S BEANS sought to be registered by Applicant in the opposed application is identical to Opposer's mark DEAN'S BEANS registered for above-described goods, so that when used on or in connection with the goods listed in the application, the mark is likely to cause confusion, mistake or to deceive the public as to the source or origin of the goods.

17. The mark DEAN'S BEANS in the opposed application is identical to Opposer's mark DEAN'S BEANS registered for above-described goods, so that Applicant's use of the mark with the stated goods is likely to dilute the distinctive quality of Opposer's mark and will destroy or dilute the value and goodwill associated with Opposer's mark and business name.

18. The mark DEAN'S BEANS in the opposed application is identical to Opposer's mark DEAN'S BEANS, so that if Applicant is successful in procuring registrations of its mark, and in particular any registration of its mark with the significantly broad description that presently accompanies the opposed mark, the Opposer will likely be foreclosed from obtaining registration on its mark DEAN'S BEANS for the full breadth of goods presently offered by the Opposer under its mark DEAN'S BEANS, or in related goods areas within which the Opposer may expand into in the future.

19. As a result of the confusion, mistake, deception or dilution that will arise from Applicant's use or registration of the mark DEAN'S BEANS, Opposer will be damaged.

20. Opposer will also be damaged if Applicant is permitted to register the mark DEAN'S BEANS since such a registration would cast doubt on Opposer's right to use the mark DEAN'S BEANS in connection with goods outside those covered in the description of goods in Opposer's incontestable Registration No. 2,184,098 for the mark DEAN'S BEANS.

WHEREFORE, Opposer prays that registration of the mark DEAN'S BEANS in Application Serial No. 76/620,265 be denied and that this opposition be sustained.

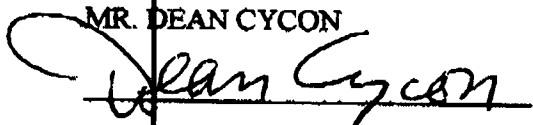
POWER OF ATTORNEY

The undersigned hereby appoints Richard D. Getz, Richard H. Kosakowski, and Patrick J. O'Shea all of O'Shea, Getz & Kosakowski, P.C., a law firm with an office located at 1500 Main Street, Springfield, MA, 01115, to act as attorneys for the Opposer in this Opposition, with full power of substitution and revocation to prosecute this Opposition, to make alterations and amendments therein, to transact all relevant business with the United States Patent and Trademark Office ("USPTO"), and to receive all official communications in connection with this Opposition.

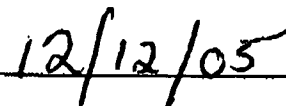
DECLARATION

The undersigned declares that he has been warned that willful false statements and the like so made herein are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code; he further declares that he is duly appointed and authorized to execute this instrument on behalf of said corporation; that he has read signed the foregoing NOTICE and knows the contents thereof; that the facts set forth in the NOTICE and this declaration are true; and that all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

MR. DEAN CYCON



Date:



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Typed Drawing

Word Mark
Goods and
Services

DEAN'S BEANS
IC 030. US 046. G & S: coffee and cocoa beans, and tea bags. FIRST USE: 19930915. FIRST
USE IN COMMERCE: 19930915

Mark Drawing Code
Design Search
Code

(1) TYPED DRAWING
75349373
August 29, 1997

Serial Number
Filing Date

Current Filing Basis 1A
Original Filing
Basis 1A

Published for
Opposition

Registration
Number 2184098
June 2, 1998

Registration Date

Owner

Attorney of Record

Type of Mark

Register

Affidavit Text

Live/Dead Indicator

August 25, 1998
(REGISTRANT) Cycon, Dean DBA Dean's Beans INDIVIDUAL UNITED STATES 50 R.W.
MOORE AVE. ORANGE MASSACHUSETTS 01364
ELLIOT A SALTER
TRADEMARK
PRINCIPAL
SECT 15. SECT 8 (6-YR).
LIVE

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